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No. 83-1963

IN THE UNITED STATES SUPREME COURT

October Term, 1983

Barrett Toan, Director, Missouri Department of Social Services, and James Moody, Director, Missouri Division of Family Services,

Petitioners,

vs.

Lucinda Cunningham, through her next friend Isabel Conner, individually and on behalf of all others similarly situated,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

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Respondent's Brief In Opposition

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

This Brief of Respondent Lucinda Cunningham is in opposition to the petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit filed on May 30, 1984, by petitioners Barrett Toan and James Moody.

OPINIONS BELOW

The opinion of the District Court, reproduced in Petitioner's Appendix A, is not reported. The opinion of the Court of Appeals is reported at 728 F.2d 1101 (8th Cir. 1984).

REGULATIONS INVOLVED

This case involves federal regulations governing the conduct of representative payees of Social Security benefits, 20 C.F.R. §§404.2035, 404.2040.

20 C.F.R. §404.2035 provides in relevant part:

> A representative payee has a responsibility to -
>
> (a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary.

20 C.F.R. §404.2040 states in relevant part:

> (a) Current maintenance. We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current

maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

(b) . . .

(C) Support of legal dependents. If the current maintenance needs of the beneficiary are met, the payee may use part of the payments for the support of the beneficiary's legally dependent spouse, child, and/or parent.

This case also involves federal regualtions governing the Aid to Families with Dependent Children (hereinafter, "AFDC") program, 45 C.F.R. §233.20(a)(3).

45 C.F.R. §233.20(a)(3) provides in relevant parts:

(ii)(D) Net income, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered; income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance . . .

and

(vi) . . . In family groups living together, income of the spouse is considered available for his spouse and income of a parent is considered available for children under 21, except that, under the AFDC plan, if a spouse or parent is receiving SSI benefits under Title XVI, then, for the period for which such benefits are received, his income and resources shall not be counted as income and resources available to the AFDC unit . . .

STATEMENT OF THE CASE

Plaintiff Lucinda Cunningham filed this case, individually and on behalf of all others similarly situated, on November 3, 1981, in the United States District Court for the Western District of Missouri. The defendants are the state officials responsible for administering the AFDC program in Missouri. Plaintiff alleged in her complaint that defendants' policy of automatically counting a minor parent's Social Security benefits paid to a representative payee as income to that parent's dependent child when determining AFDC eligibility and grant amount violated federal regulations and was thus invalid under the Supremacy Clause of the United States Constitution.

On December 16, 1981, the district court issued a preliminary injunction on behalf of the named plaintiff, enjoining defendants from counting plaintiff's Social Security benefits paid to a representative payee as income to her dependent son, except to the extent that those Soial Security benefits were actually applied to his needs.

On March 24, 1983, the district court certified plaintiff's proposed class. The class consists of all minor parents in the State of Missouri whose AFDC benefits have been or will be reduced, denied, or terminated because of defendants' policy of automatically counting Social Security benefits of a minor parent paid to a representative payee as income to the minor parent's dependent child when determining AFDC eligibility and grant amount.

On April 25, 1983, the district court entered its final judgment for plaintiff and her class and permanently enjoined defendants from counting a minor parent's Social Security benefits paid to a representative payee as income to a dependent child when determining AFDC eligibility and grant amount, except to the extent that those Social Security benefits are actually applied to the needs of the dependent child. The United States Court of Appeals for the Eighth Circuit affirmed the judgment of the district court on March 1, 1984.

Defendants' former policy, which was enjoined by the district court, worked in the following manner for a family consisting of a dependent child and a minor parent with Social Security benefits paid to a representative payee. First, defendant automatically counted the Social Security benefits of a minor parent paid to a representative payee as income to a dependent child regardless of whether the representative payee applied any of the parent's benefits to the needs of the child. Next, the entire amount of the Social Security benefits was compared to the AFDC standard of need for a two person assistance group in order to determine eligibility. Then, the Social Security benefits were subtracted from the AFDC payment level in order to calculate the grant amount. Under this policy, it was irrelevant whether the representative payee spent most or all of the Social Security benefits on the needs of the minor parent.

The fact situation of the named plaintiff illustrates how defendants' policy was applied.

Plaintiff Lucinda Cunningham was a fifteen year old beneficiary of $183.10 in Social Security benefits. Because she was a minor, the Social Security Administration paid these benefits to a representative payee. Plaintiff filed an application for AFDC benefits with the Missouri Division of Family Services (hereinafter "DFS") shortly after the birth of her son on July 13, 1981. DFS proceeded to process her application. First, DFS deemed the entire amount of plaintiff's Social Security benefits as income to both her and her dependent son.

Next, in order to determine eligibility, DFS compared the Social Security benefits to the AFDC standard of need for a two person assistance group. Then, DFS substracted the Social Security benefits from the AFDC payment level in order to calculate the AFDC grant amount of $21.00 per month.

Plaintiff Lucinda Cunningham subsequently filed this action seeking injunctive relief. On December 16, 1981, the district court issued a preliminary injunction enjoining defendants from counting plaintiff's Social Security benefits paid to a representative payee as income to her dependent son when calculating his AFDC eligibility and grant amount except to the extent that those Social Security benefits were actually applied to his needs. The Court reasoned that defendants had unlawfully restricted the discretion of the representative payee of plaintiff's Social Security benefits by automatically presuming that those benefits were actually available as income to plaintiff's son. The Court concluded that in order to avoid unlawfully restricting the discretion of the representative payee, defendants must allow plaintiff to exclude herself from the AFDC assistance group and determine her son's AFDC eligibility and grant amount based solely on the amount of plaintiff's Social Security benefits which were actually available to her son's needs. Since, at that time, the maximum AFDC grant for one person was $115 per month, and the representative payee actually applied $11 per month of plaintiff's Social Security benefits to the son's needs, the Court found that plaintiff was entitled to the difference between these two figures of $104 per month in AFDC benefits. Thus, in the named plaintiff's case the effect of defendants' policy was to reduce her AFDC benefits from $104 per month to $21 per month. Defendants' policy affected the unnamed members of plaintiff's class in a similar manner until the district court issued its permanent injunction.

ARGUMENT

I

The Court Of Appeals Decision Correctly Holds That Social Security Benefits Of A Minor Parent Paid To A Representative Payee May Not Be Deemed As Income To A Dependent Child For The Purpose Of Determining AFDC Eligibility And Grant Amount.

AFDC is a joint federal and state program established by the Social Security Act, 42 U.S.C. §§601-615, designed to provide financial assistance to needy dependent children and the parents and relatives who care for them. The

program is based on financial need. Dependent children are eligible for a grant if their income and resources are less than a minium subsistence level. In addition, to qualify for AFDC benefits, the children must be deprived of the parental support of at least one parent due to absence or incapacity. If the caretaker parent or relative with whom the children live is also needy, then he or she can be added to the grant.

Although the AFDC program is financed primarily by the federal government, the program is administered by the participating states. In return for receiving federal financial assistance, states must operate their AFDC programs in compliance with the Social Security Act and regulations promulgated thereunder, King v. Smith, 392 U.S. 309, 317 (1968).

The present case involves the State of Missouri's policy of deeming income when determining AFDC eligibility and grant amount. In previous cases, this Court has repeatedly held that income may not be counted under the AFDC program unless that income is actually available to meet the needs of the AFDC applicant or recipient, King v. Smith, supra; Van Lure v. Hurley, 421 U.S. 338 (1975); Lewis v. Martin, 397 U.S. 552 (1970). The concept of actual availability is codified in the federal regulations governing the AFDC program, 45 C.F.R. §233.20(a)(3)(ii)(D).

In the present case, defendants' policy of deeming Social Security benefits of a minor parent paid to a representative payee as income to a dependent child violates the requirement of actual availability of income set forth in the federal regulations. The benefits are not actually available to a dependent child because the representative payee is required by law to apply the Social Security benefits to the use and benefit of the minor parent, 20 C.F.R. §404.2035. Failure to apply the benefits to the needs of the minor parent subjects the representative payee to criminal prosecution under 42 U.S.C. §408(e). Since these Social Security benefits are not actually available to a dependent child, defendants may not deem them as income to the child when determining AFDC eligbility and grant amount.

The two other Circuits which have considered the issue presented by this case have also ruled that the policy followed by defendants here violates federal regulations and is therefore invalid under the Supremacy Clause of the United States Constitution.

In Riddick v. D'Elia, 626 F.2d 1084 (2d Cir. 1980), the Second Circuit was faced with a nearly identical factual situation. In Riddick, the AFDC benefits of a mentally-disabled mother were reduced because the New York Department of Social Services deemed her Social Security benefits paid to a representative payee as income to her dependent child when calculating the amount of her AFDC grant. The undisputed evidence showed that the representative payee applied the mother's Social Security benefits solely to the needs of the mother. The Second Circuit held that the state agency's policy of automatically presuming that a parent's Social Security benefits paid to a representative payee are actually available as income to a dependent child unlawfully interfered with the broad discretion conferred upon representative payees by 20 C.F.R. §404.2035. For this reason, the Court of Appeals ruled that the state agency's policy was invalid under the Supremacy Clause.

The same result was reached by the Sixth Circuit, which was presented with a factual situation identical to the instant case, Snider v. Creasy, 728 F.2d 369 (6th Cir. 1984). In Snider, the named plaintiffs were minor mothers whose AFDC benefits were reduced or denied because the Ohio Department of Public Welfare deemed their Social Security benfeits paid to a representative payee as income to their dependent children. The Sixth Circuit ruled that Ohio's policy conflicted with federal regulations granting representative payees discretion to determine how Social Security benefits are used and with federal regulations reguiring that income must be actually available before it can be treated as income for purposes of determining AFDC eligibility and grant amount.

The decisions by the Second and Sixth Circuit are indistinguishable from the decision by the Eighth Circuit in this case. Plaintiff has been unable to find and defendants have failed to cite any case which holds that Social Security benefits paid to a representative payee may be deemed income to anyone other than the beneficiary.

II

The Court Of Appeals' Decision Does Not Conflict With Any Decisions Of This Court.

Defendants contend that the Court of Appeals' decision conflicts with this Court's decision in Schweiker v. Gray Panthers, 453 U.S. 34 (1981). There,

this Court upheld the right of a state to deem a spouse's income to a Medicaid applicant. However, Gray Panthers is readily distinguishable from the instant case because it involved payments made directly to a beneficiary, rather than payments made to a representative payee. This distinction is crucial. The Court of Appeals' decision is clearly limited to the situation in which benefits are paid to a representative payee who is required by law to apply them to the needs of the beneficiary. Since Gray Panthers did not involve this situation, the decision by the Eighth Circuit does not conflict with any decisions of this Court.

Defendants also argue that the Court of Appeals' decision conflicts with Gray Panthers because it fails to give due deference to the Secretary's interpretation of her own regulations. Again, Gray Panthers is readily distinguishable. Gray Panthers held that when the Secretary is expressly directed by Congress to define a term, the definition is entitled to "legislative effect" and must be followed unless it is arbitrary or capricious or inconsistent with the Social Security Act. In contrast, the Eighth Circuit's decision here dealt with the Secretary's interpretation of her own regulations. Such interpretations are entitled to deference or weight, but they need not be followed if they are inconsistent with the regulations, Gray Panthers at 44; United States v. Larionoff, 431 U.S. 864, 872 (1977).

Here, the Secretary filed an amicus brief which was considered and rejected by the Eighth Circuit. In that brief, the Secretary argued that Social Security benefits of a minor parent paid to a representative payee must be counted as income to a dependent child to the extent that those benefits exceed the AFDC need standard for one person. The Secretary's interpretation directly conflicts with her own regulations which grant representative payees broad discretion to determine when the needs of a Social Security beneficiary have been met, 20 C.F.R. §404.2035. Since the Secretary's interpretation is inconsistent with her own regulations, the Eighth Circuit was correct in not following it.

Conclusion

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

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Certificate of Services

I, RICHARD D. CHASE, a member of the Bar of the Supreme Court of the United States, certify that pursuant to Supreme Court Rule 28.3 I served the foregoing typewritten Respondent's Brief In Opposition To Petition For Certiorari by depositing one copy thereof in a United States post office on June 21st, 1984, with postage prepaid, addressed to Mr. Robert R. Northcutt, Counsel for Petitioners, Department of Social Services, General Counsel Division, P.O. Box 1527, Jefferson City, Missouri, 65102.

Richard Chase
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